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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,622	12/12/2001	Paul F. Laeseke	960296.98636	5043
27114	7590	10/14/2005		
QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE, SUITE 2040 MILWAUKEE, WI 53202-4497			EXAMINER MARMOR II, CHARLES ALAN	
			ART UNIT 3736	PAPER NUMBER

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/021,622	Applicant(s) LAESEKE ET AL.	
	Examiner Charles A. Marmor, II	Art Unit 3736	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

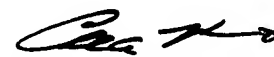
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


Charles A. Marmor, II
Primary Examiner
Art Unit: 3736

Continuation of 3. NOTE: The proposed amendment would require further consideration and search. Claim 5, as previously considered, required that a distal end of the introducer shaft have an electrically conductive surface and that an electrically conductive surface be formed by a conductive stylet. The proposed amendment would no longer require that the distal end of the introducer shaft have an electrically conductive surface, requiring at least further consideration. Additionally, the proposed amendment appears to include an antecedent basis error regarding the limitation "the ground pad" at line 20.

Continuation of 11. does NOT place the application in condition for allowance because: With regard to claim 5, Applicant contends that the Roberts assembly is not disclosed to be sized or dimensioned for percutaneous insertion. The Examiner respectfully disagrees. The American Heritage Dictionary of the English Language, Fourth Edition (2000) defines "percutaneous" to mean "passed, done or effected through the skin." Merriam-Webster's Medical Dictionary (2002) defines "percutaneous" to mean "effected or performed through the skin." The endoscope and apparatus of Roberts et al. is dimensioned such that it appears fully capable of being inserted through the skin, such as through a port or incision in the skin of the abdominal region. Applicant then contends that Roberts fails to teach an assembly having three separate components. The Examiner respectfully disagrees. The Examiner submits that Figures 4a-4f illustrate an assembly having at least three separate components. Applicant next contends that Roberts fails to teach an element that may be considered equivalent to the stylet as recited in claim 5. The Examiner respectfully disagrees. Claim 5 recites a conductive stylet but is silent with respect to any specific structure that forms the stylet. The American Heritage Dictionary of the English Language, Fourth Edition (2000) defines "stylet" to mean "a surgical probe." In view of this definition, either the element 12 of Figure 4a or the element 134 of Figure 8b may be considered to form a stylet supported in an introducer shaft (50,124). Applicant finally contends that Roberts does not teach that the sheath 12 can guide the insertion of a biopsy needle. The Examiner respectfully disagrees. Figures 4a-4c of the Roberts patent show both elements 12 and 50 guiding a biopsy needle having sampling means 30.

With regard to claim 10, Applicant contends that neither Roberts nor Lennox disclose an introducer shaft capable of guiding a biopsy needle. As discussed above with respect to claim 5, the Examiner respectfully disagrees and submits that Roberts teaches a device that is capable of percutaneous insertion and that includes an introducer shaft that guides a biopsy needle.